

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION**

RIS PAPER COMPANY, INC., d/b/a
DOMTAR DISTRIBUTION GROUP

Employer

and

Case 4–RC–21474

UNITED STEEL, PAPER AND FORESTRY, RUBBER,
MANUFACTURING, ENERGY, ALLIED INDUSTRIAL
AND SERVICE WORKERS INTERNATIONAL UNION
DISTRICT 10, AFL–CIO

Petitioner

**REPORT AND RECOMMENDATION ON CHALLENGED BALLOTS
AND OBJECTIONS TO SECOND ELECTION
AND NOTICE OF HEARING**

Pursuant to a Stipulation approved by the Regional Director on March 4, 2009, a second election by was conducted on March 20, 2009 in the unit originally set forth in Paragraph 13 of a Stipulated Election Agreement. The Tally of ballots for the second election, copies of which were made available to the parties at the conclusion of the ballot count on March 20, 2009, showed the following results:

Approximate number of eligible voters	16
Void ballots	0
Votes cast for Petitioner	4
Votes cast against participating labor organization.....	6
Valid votes counted.....	10
Challenged ballots	6
Valid votes counted plus challenged ballots	16

The challenged ballots were determinative of the results of the election.

On March 26, the Petitioner timely filed Objections to conduct affecting the results of the rerun election, a copy of which is affixed as Attachment 1.

Pursuant to paragraph 7 of the original Stipulated Election Agreement and Section 102.69(c) of the Board's Rules and Regulations, a preliminary investigation of the Objections and challenged ballots was conducted under my direction and supervision. Based on the evidence obtained, the undersigned reports as follows:

Objections 1, 2, and 3

Objection 1 alleges that the Employer permanently laid off six bargaining unit employees and moved two management employees into the bargaining unit in order to influence the outcome of the second election. Objection 2 alleges that prior to the rerun election, the Employer attempted to illegally manipulate voter eligibility by initiating a Severance Program for the laid-off employees. Objection 3 alleges that the six laid-off employees were unlawfully coerced into signing separation agreements in exchange for the benefits provided under the Severance Program. The Petitioner also filed unfair labor practice charges in Cases 4-CA-36608 and 4-CA-36630 on February 25, and March 10, 2009, respectively, alleging, inter alia, that the conduct alleged in Objections 1, 2, and 3 violated Section 8(a)(1) and (3) of the Act. Based on the results of the unfair labor practice investigations, it was determined that the charge in Case 4-CA-36608 concerning the alleged discriminatory permanent layoffs and the reassignment of two supervisors to bargaining unit positions lacked merit. Additionally, it was concluded that the portion of the charge in Case 4-CA-36630 alleging that Employer unlawfully coerced employees to sign separation agreements lacked merit. By letter dated May 28, 2009, the parties were notified of my determination to dismiss the charge in Case 4-CA-36608 and the portion of the charge in Case 4-CA-36630 concerning the separation agreements.¹ Consistent with the foregoing, I find that Objections 1, 2, and 3 lack merit.

Objections 4, 5, 6 and 7

Based on the preliminary investigation, it was concluded that Objections 4, 5, 6, and 7 raise substantial and material issues of fact that can best be resolved on the basis of record testimony taken at a hearing².

¹ On July 17, 2009, the Office of Appeals denied the Charging Party's appeal of that determination.

² The remaining Section 8(a)(1) allegations of the charge in Case 4-CA-36630 are based, in part, upon the same conduct which is the subject of Petitioner's Objections 4, 5, 6, and 7. The disposition of the remaining 8(a)(1) allegations in Case 4-CA-36630 will be held in abeyance pending resolution of the related Objections. See NLRB Casehandling Manual Section 11407 (b).

The Challenged Ballots

The ballots of the six permanently laid-off employees referred to above in Objections 1, 2 and 3 were challenged at the election. The names of these individuals are as follows: Suliman Bakri, Keith Diffendall, Michael Greenawalt, Nihad Kokic, Gurdeep Singh, and John Wettrau. The Board Agent challenged their ballots because their names were not on the list of eligible voters prepared by the Employer. The Employer challenged their ballots because these individuals had all had been discharged or laid off with no expectancy of recall prior to the date of the election. The Union contends that these six individuals are eligible to vote because their permanent layoffs were unlawful. Having investigated and dismissed the allegations concerning the lawfulness of the layoffs in the related unfair labor practice cases, I find that these six employees were permanently laid off as of the date of the election, with no expectancy of recall, and therefore were ineligible to vote in the election.

RECOMMENDATION

Having found that Objections 1, 2 and 3 lack merit, I recommend that they be overruled.

Having found that Suliman Bakri, Keith Diffendall, Michael Greenawalt, Nihad Kokic, Gurdeep Singh, and John Wettrau were permanently laid off as of the date of the election, I recommend that the challenges to their ballots be sustained.

Right to File Exceptions: Pursuant to the provisions of Section 102.69 of the National Labor Relations Board's Rules and Regulations, you may file exceptions to this Report with the Executive Secretary, National Labor Relations Board, 1099, 14th Street, N.W., Washington, D.C. 20570-0001. Under the provisions of Section 102.69(g) of the Board's Rules, documentary evidence, including affidavits, which a party has timely submitted to the Regional Director in support of its objections or challenges and that are not included in the Report, is not part of the record before the Board unless appended to the exceptions or opposition thereto that the party files with the Board. Failure to append to the submission to the Board copies of evidence timely submitted to the Regional Director and not included in the Report shall preclude a party from relying on that evidence in any subsequent related unfair labor practice proceeding.

Procedures for Filing Exceptions: Pursuant to the Board's Rules and Regulations, Sections 102.111 – 102.114, concerning the Service and Filing of Papers, exceptions must be received by the Executive Secretary of the Board in Washington, D.C. by close of business on August 7, 2009 at 5 p.m. (ET), unless filed electronically. **Consistent with the Agency's E-Government initiative, parties are encouraged to file exceptions electronically.** If exceptions are filed electronically, the exceptions will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time** on the due date. Please be advised that Section 102.114 of the Board's Rules and Regulations precludes acceptance of exceptions filed by facsimile transmission. Upon good

cause shown, the Board may grant special permission for a longer period within which to file.³ A copy of the exceptions must be served on each of the other parties to the proceeding, as well as to the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing exceptions electronically may be accomplished by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, select the E-Gov tab, and then click on the E-filing link on the pull down menu. Click on the "File Documents" button under Board/Office of the Executive Secretary and then follow the directions. The responsibility for the receipt of the exceptions rests exclusively with the sender. A failure to timely file the exceptions will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

NOTICE OF HEARING

Having found that Objections 4, 5, 6, and 7 raise substantial and material issues of fact, I find that a hearing as to these Objections is warranted.

IT IS HEREBY ORDERED, pursuant to Section 102.69 of the Board's Rules and Regulations, that a hearing be held before a Hearing Officer for the purpose of taking testimony to resolve the substantial and material factual issues raised by Objections 4, 5, 6, and 7

IT IS FURTHER ORDERED that the Hearing Officer designated for the purpose of conducting such hearing shall prepare and cause to be served on the parties a report resolving questions of credibility and containing findings of fact and recommendations to the Board as to the disposition of the issues. Within 14 days from the date of issuance of such report, either party may file with the Board in Washington, D.C. an original and eight copies of exceptions thereto. Immediately upon the filing of such exceptions, the filing party shall serve a copy thereof on the other party and shall file a copy with the Regional Director. If no exceptions are filed thereto, the Board will adopt the recommendations of the Hearing Officer.

YOU ARE HEREBY NOTIFIED that, pursuant to the above Order, commencing on August 11, 2009 at 10:00 a.m. and on consecutive days thereafter until the record is closed, in a hearing room of the National Labor Relations Board, Fourth Region, 615 Chestnut St. 7th Floor, Philadelphia, Pennsylvania, a hearing will be conducted before a duly designated Hearing Officer of the National Labor Relations Board upon the issues raised by the preliminary

³ A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

investigation, at which time and place the parties will have the right to appear in person or otherwise and give testimony.

Signed at Philadelphia, Pennsylvania this 24th day of July, 2009.

/s/ Dorothy L. Moore-Duncan
DOROTHY L. MOORE-DUNCAN
Regional Director, Fourth Region
National Labor Relations Board

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OJBS TO 2ND ELECTION AND NOH.DOC*

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 4

In the Matter of)	
)	
UNITED STEEL WORKERS, AFL-CIO, CLC)	
)	
Petitioner)	
)	Case 4-RC-21474
And)	
)	
RIS PAPER COMPANY, INC. d/b/a DOMTAR)	
DISTRIBUTION GROUP)	
)	
Employer)	
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OBJECTIONS TO ELECTION

The National Labor Relations Board ("Board") conducted a re-run representation election on March 20, 2009 among employees of RIS Paper Company, Inc. ("Employer") to see if they wished to be represented by the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Services Workers International Union, AFL-CIO-CLC ("Union"). The Union, on this 25th day of March 2009, hereby submits the following Objections to conduct affecting the results of the Election pursuant to 29 C.F.R. § 102.69 and its rights under the National Labor Relations Act ("Act"). The Union will submit evidence in support of these Objections within seven days of filing as required by 29 C.F.R. § 102.69.

A TTACHEMENT 1

OBJECTIONS

Separately, and cumulatively, the following Objections constitute conduct which prevented a free and uncoerced exercise of choice by the employees, undermining the Board's efforts to provide "a laboratory in which an experiment may be conducted, under conditions as nearly as ideal as possible, to determine the uninhibited desires of the employees." In re Jensen Enterprises, Inc., 339 NLRB No. 105 (2003) (citing General Shoe Corp., 77 NLRB 124 (1948)). Accordingly, these objections constitute grounds to set the election aside:

1. The employer only fourteen days prior to the removal of the NLRB posting and during discussions on a new election date illegally manipulated the bargaining unit by permanently laying off six employees and moving two management employees into the bargaining unit. The employer had never previously engaged in permanent layoffs and the change in policy was made in an effort to alter the make up of the bargaining unit shortly before an the rerun election.

2. The employer only fourteen days prior to the removal of the NLRB posting and during discussions on a new election date created a new program titled "Domtar's Termination of Employment for Business Reasons Severance Program" in an attempt to support their illegal manipulation of the bargaining unit. Again, the employer implemented this program for the first time ever shortly before the rerun election was scheduled.

3. The employer only fourteen days prior to the removal of the NLRB posting and during discussions on a new election date coerced the same six employees into the signing of a waiver of recall by giving them a short time period before the election to sign the agreement in order to receive four weeks of severance pay. Anyone who would not sign was informed they were still being permanently laid off and would not have rights to recall. Any employee who signed was subject to giving up their rights to file a claim with the NLRB about their discharge.
4. The employer informed employees during an anti-union captive meeting after the six employees were perrilanently laid off that the economic condition of the facility was due to the Union activity.
5. The employer threatened, intimidated, scared, implied and led the remaining employees during the critical period of the campaign that organizing there would bring serious harm to all and the facility being a whole lot worse off, it would be a gamble on their benefits and their working future and future of the plant if they would organize.

6. The employer in an attempt to deceive and discourage support for the United Steelworkers during the re-run campaign continued to show strong union animus by informing the remaining employees that they will vigorously continue to fight the organizing effort.
7. The employer is illegally maintaining a policy of prohibition on salary disclosure among the employees.

Respectfully submitted March 26,2009

Phil Arnot

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